



Amendment No. 4  
to  
MA 8200 NS190000012  
for  
Digital Signage Software  
between  
Four Winds Interactive, LLC (Contractor)  
and the  
City of Austin

1.0 The above referenced contract is amended as follows:

The City hereby exercises an Administrative Increase of \$45,833.85 for this contract.

2.0 The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Initial Term: 02/27/2019- 02/26/2020	\$4,803.80	\$4,803.80
Amendment No. 1: Administrative Increase 06/26/2019	\$6,905.00	\$51,708.80
Amendment No. 2: Option 1 - Extension 02/27/2020- 02/26/2021	\$44,803.80	\$96,511.60
Amendment No. 3 Administrative Increase	\$15,000.00	\$111,511.60
Amendment No. 4 Administrative Increase	\$45,833.85	\$157,345.45

3.0 MBE/WBE goals were not established for this contract.

4.0 By signing this amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas or the City of Austin.

5.0 All other terms and conditions remain the same.

By the signature affixed below, this amendment is hereby incorporated into and made a part of the above referenced contract.

**Authorized Representative:**

Contractor Signature: Margot Moellenberg

Printed Name: Margot Moellenberg

Date: March 18, 2020

Four Winds Interactive, LLC  
1221 Broadway  
Denver, Colorado 80203

**Gil Zilkha**

Digitally signed by Gil Zilkha  
DN: cn=Gil Zilkha, o=City of Austin,  
ou=Purchasing Office,  
email=Gil.Zilkha@austintexas.gov, c=US  
Date: 2020.03.19 13:21:56 -0500

Signature: \_\_\_\_\_

City of Austin Purchasing Office

Printed Name: Gil Zilkha

Date: March 19, 2020

City of Austin  
124 W. 8<sup>th</sup> St., Ste. 310  
Austin, TX 78701



**Amendment No. 3**  
to  
MA 8200 NS190000012  
for  
Digital Signage Software  
between  
Four Winds Interactive, LLC (Contractor)  
and the  
City of Austin

1.0 The above referenced contract is amended as follows:

The City hereby exercises an Administrative Increase of \$15,000.00 for this contract.

2.0 The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Initial Term: 02/27/2019- 02/26/2020	\$4,803.80	\$4,803.80
Amendment No. 1: Administrative Increase 06/26/2019	\$6,905.00	\$51,708.80
Amendment No. 2: Option 1 - Extension 02/27/2020- 02/26/2021	\$44,803.80	\$96,511.60
Amendment No. 3 Administrative Increase	\$15,000.00	\$111,511.60

3.0 MBE/WBE goals were not established for this contract.

4.0 By signing this amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas or the City of Austin.

5.0 All other terms and conditions remain the same.

By the signature affixed below, this amendment is hereby incorporated into and made a part of the above referenced contract.

**Authorized Representative:**

Contractor Signature: Margot Moellenberg

Signature: [Handwritten Signature]

Printed Name: Margot Moellenberg

City of Austin Purchasing Office  
Printed Name: Gil Bilka

Date: February 28, 2019

Date: 3/6/20

Four Winds Interactive, LLC  
1221 Broadway  
Denver, Colorado 80203

City of Austin  
124 W. 8<sup>th</sup> St., Ste. 310  
Austin, TX 78701



Amendment No. 2  
to  
Contract No. MA 8200 NS19000012  
for  
Digital Signage Software  
between  
Four Winds Interactive, LLC  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be effective February 27, 2020 to February 26, 2021. Three options will remain.
- 2.0 The total contract amount is increased by \$44,803.80 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 02/27/2019 – 02/26/2020	\$44,803.80	\$44,803.80
Amendment No. 1: Administrative Increase 06/26/2019	\$6,905.00	\$51,708.80
Amendment No. 2: Option 1 – Extension 02/27/2020 – 02/26/2021	\$44,803.80	\$96,511.60

- 3.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 4.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: Margot Moellenberg 01/07/2020

Printed Name: Margot Moellenberg, President  
Authorized Representative  
Four Winds Interactive, LLC  
1221 Broadway  
Denver, Colorado 80203  
[adaughters@fourwindsinteractive.com](mailto:adaughters@fourwindsinteractive.com)  
720-389-3640 x 3640

Sign/Date: \_\_\_\_\_

Jim Howard  
Procurement Manager  
Austin Energy  
721 Barton Springs Road  
Austin, Texas 78704



Amendment No. 1  
to  
Contract No. MA 8200 NS19000012  
for  
Digital Signage Software  
between  
Four Winds Interactive, LLC  
and the  
City of Austin, Texas

1.0 The City hereby amends Exhibit B in the above referenced contract to increase available funding to provide professional services in an amount not to exceed \$6,905.00.

2.0 The total Contract amount is recapped below:

Term	Contract Amount for the Item	Total Contract Amount
Basic Term: 2/27/2019 – 2/26/2020	\$44,803.80	\$44,803.80
Amendment No. 1: Administrative Increase	\$6,905.00	\$51,708.80

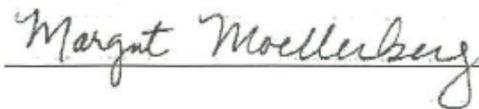
3.0 MBE/WBE goals were not established for this contract.

4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

9.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above referenced contract.

Signature & Date

  
\_\_\_\_\_

Printed Name: Margot Moellenberg

Authorized Representative

Four Winds Interactive, LLC

1221 Broadway

Denver, Colorado 80203

Signature & Date

 6/26/19  
\_\_\_\_\_

Daniel Dellemonache, Procurement Specialist III

City of Austin Purchasing Office

**CONTRACT BETWEEN THE CITY OF AUSTIN  
AND  
Four Winds Interactive, LLC  
For  
Digital Signage Software  
Contract Number: MA 8200 NS19000012**

This Contract is made by and between the City of Austin (“City”), a home-rule municipality incorporated by the State of Texas, and Four Winds Interactive, LLC (“Contractor”), having offices at 1221 Broadway, Denver, Colorado, 80203. “Contract” as used herein incorporates all exhibits hereto.

**SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES**

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Exhibit B hereto.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing the aspects of the tasks and associated activities identified as set forth in Exhibit B hereto. In the event that the need arises for the Contractor to perform services beyond those stated in Exhibit B hereto, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

1.3 **Responsibilities of the City.** The City’s Contract Manager will be responsible for exercising general oversight of the Contractor’s activities in completing the work contemplated in Exhibit B hereto. Specifically, the Contract Manager will represent the City’s interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City’s Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

**SECTION 2. SCOPE OF WORK**

2.1 **Contractor’s Obligations.** The Contractor shall fully and timely provide all deliverables described in Exhibit B hereto in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

**SECTION 3. COMPENSATION**

3.1 **Contract Amount.** The Contractor will be paid in accordance with Exhibit B hereto. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed the agreed-upon amount stated in Exhibit B hereto.

3.2 **Invoices.**

3.2.1 **Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department’s Name, and the name of the point of contact for the Department.** Invoices shall be itemized. The Contractor’s name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor’s registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor’s invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin
Department	Austin Convention Center
Attn:	Accounts Payable
Address	PO Box 1088
City, State, Zip Code	Austin, TX 78767

3.2.2 Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

3.2.3 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

3.2.4 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

### 3.3 **Payment.**

3.3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.3.2 **If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**

3.3.3 To the extent there is a good faith dispute regarding the amounts owed by the City, the City shall pay the amount invoiced that is not disputed. With respect to any disputed amount, the City will provide Contractor with notice of its reasons for withholding payment and will work with Contractor in good faith to resolve the dispute. If the parties cannot reach an agreement regarding the disputed amount, the parties shall resolve the matter in accordance with the relevant mediation and/or dispute resolution provisions herein. The City may make a good faith dispute regarding amounts owed to Contractor to such extent as may be necessary on account of:

3.3.3.1 delivery of defective or non-conforming deliverables by the Contractor;

3.3.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

3.3.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;

3.3.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

3.3.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

3.3.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.3.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.

3.3.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.3.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. Any payments by Credit Card will be governed by Article II Section 5 of Exhibit A.

3.4 **Non-Appropriation.** The awarding or continuation of the term specified in Exhibit B hereto is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for the work contemplated in Exhibit B hereto. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor thirty (30) days prior written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.5 **Reimbursable Expenses.** Expenses incurred directly in support of completing the work set forth in this Contract are reimbursable to the Contractor within the Contract amount.

3.5.1 **Administrative.** The Contractor will be reimbursed for selected administrative expenses incurred directly in support of executing this Contract. Reimbursable administrative expenses include actual charges for long distance telephone calls, facsimile transmissions, reproduction, printing and binding, postage, express delivery and report processing.

3.5.2 **Travel Expenses.** All travel, lodging, and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Contract will be reviewed against the City's Travel Policy and the current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulation.

### 3.6 **Final Payment and Close-Out.**

3.6.1 The making and acceptance of final payment will constitute:

3.6.1.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

3.6.1.2 a waiver of all claims by the Contractor against the City other than those (1) previously asserted in writing and not yet settled; (2) arising from failure of the City to comply with its obligations under Exhibit B hereto.

## SECTION 4. TERM AND TERMINATION

4.1 **Term.** This Contract shall remain in full force and effect so long as the City utilizes the software and/or professional services as set forth in Exhibit B hereto. The term of the subscription software and any professional services engagement shall be set forth in Exhibit B hereto. The initial term of the Contract is 12 months, however the City may execute additional Ordering Documents (including, statements of work and/or quotes) for up to four additional 12-month terms at its sole option.

4.2 **Right To Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance" paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective thirty (30) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such thirty (30) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. The City shall provide Contractor with notice of specific perceived failures and work with Contractor during the probationary period to cure any such failures. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors"

and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 **Termination In the Event of Change of City Council.** The City, under a City Council different than the City Council in place upon execution of this Agreement, shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.6 **Fraud.** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

## SECTION 5. INSURANCE

### 5.1 **General Requirements:**

5.1.1 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award

5.1.2 The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

5.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

5.1.4 The Certificate of Insurance, and updates, shall be mailed to the following address:

City of Austin Purchasing Office  
P. O. Box 1088  
Austin, Texas 78767

5.2 **Specific Coverage Requirements:** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

5.2.1 **Worker's Compensation and Employers' Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.

5.2.1.1 The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:

5.2.1.1.1 Waiver of Subrogation, Form WC420304, or equivalent coverage

5.2.1.1.2 Thirty (30) days Notice of Cancellation, Form WC420604

5.2.2 **Commercial General Liability Insurance:** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).

5.2.2.1 The policy shall contain the following provisions:

5.2.2.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

5.2.2.1.2 Contractor/Subcontracted Work.

5.2.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

5.2.2.1.4 If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage.

5.2.2.2 The policy shall also include these endorsements in favor of the City of Austin:

5.2.2.2.1 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage

5.2.2.2.2 Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage

5.2.2.2.3 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage

5.2.3 **Business Automobile Liability Insurance:** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.

5.2.3.1 The policy shall include these endorsements in favor of the City of Austin:

5.2.3.1.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage

5.2.3.1.2 Thirty (30) days Notice of Cancellation, Endorsement CA0244, or equivalent coverage

5.2.3.1.3 The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

5.2.4 **Professional Liability/Technology Errors and Omissions Insurance:** The Contractor shall provide coverage, at a minimum limit of \$1,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, omission, or breach of security (including but not limited to any confidential or private information) arising out of the performance of professional services under this Agreement. The required coverage shall extend to technology licensed and/or purchased, including any Software licensed or Hardware purchased under this Contract.

If coverage is written on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Contract and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the completion of the contract.

5.3 **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed

to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

## **SECTION 6. OTHER DELIVERABLES**

### **6.1 Delays.**

6.1.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

6.1.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

**Ownership And Use Of Deliverables.** The ownership and use of FWI-provided software, professional services, and/or hardware shall be governed entirely by Exhibit A.

6.2 **Rights to Proposal and Contractual Material.** Any portions of proposal material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

6.3 **Publications.** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

## **SECTION 7. WARRANTIES**

### **7.1 Warranty – Price.**

7.1.1 The Contractor agrees that the fees and pricing offered by Contractor to the City are equivalent to, or better than, pricing offered to comparable customers requesting similar use case solutions in the same industry and geographical area.

7.2 **Warranty – Services.** The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

7.2.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

7.2.2 Unless otherwise specified in the Contract, the warranty period shall be one year from the acceptance date. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

7.2.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources.

In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

## **SECTION 8. MISCELLANEOUS**

### **8.1 Audits and Records.**

8.1.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City, provided such are working with and appointed by the Office of the City Auditor, shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract solely in conjunction with the activities of the Office of the City Auditor. Under no circumstances shall City or its auditor be allowed access to FWI's other customers' information or accounts. Such audits shall be designed to minimize impact on Contractor's standard business operations and limited to only the least amount of records necessary to complete the audit. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

#### 8.1.2 Records Retention:

8.1.2.1 Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format that contain property of the City, except a record specifically relating to the Contractor's internal administration.

8.1.2.2 All Records contain property of the City. The Contractor may not dispose of or destroy a Record without City authorization. Contractor shall deliver the Records in a form mutually agreed upon, along with all applicable finding aids and metadata. The parties recognize that if material costs are incurred as a result of a provision of the records, the parties will discuss allocation of those costs at that time.

8.1.3 The Contractor shall include sections 8.1.2.1 and 8.1.2 above in all subcontractor agreements entered into in connection with this Contract.

8.2 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

### **8.3 Indemnity.**

#### 8.3.1 Definitions:

8.3.1.1 "Indemnified Claims" shall mean all third party claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

8.3.1.1.1 death bodily injury, or property damage caused by Contractor's gross negligence or willful misconduct arising out of Contractor's execution of the Contract or Ordering Documents,

8.3.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

**8.3.2 THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR**

**(INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM. CONTRACTOR WILL BE SOLELY RESPONSIBLE FOR PROVIDING WORKERS COMPENSATION OR OTHER COVERAGE OR BENEFIT FOR ITS OWN EMPLOYEES IN CASE OF INJURY WHILE WORKING ON THE CONTRACT.**

8.4 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) business days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2<sup>nd</sup> Street, 4<sup>th</sup> Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

8.5 **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:	To the Contractor:
City of Austin, Purchasing Office	Contractor's Name
ATTN: CA's Name, Contract Administrator	ATTN: Name, Contract Manager
P O Box 1088	Street Address
Austin, TX 78767	City, State Zip Code

8.6 **Confidentiality.** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "City Confidential Information"). Contractor acknowledges and agrees that the City Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the City Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the City Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the City Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the City Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the City Confidential Information.

8.7 **Advertising.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

8.8 **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

8.9 **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable

treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

8.10 **Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision shall render the Contract voidable.

8.11 **Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

8.12 **Assignment-Delegation.** The Contract shall be binding upon and inure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the either party without the prior written consent of the other party hereto. Any attempted assignment or delegation by either party shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

8.13 **Waiver.** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

8.14 **Modifications.** The Contract can be modified or amended only in writing signed by both parties. No pre-printed or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

8.15 **Interpretation.** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

8.16 **Dispute Resolution.**

8.16.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

8.16.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in

the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

#### 8.17 **Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.**

8.17.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

8.17.2 The City of Austin has determined that no goals are appropriate for this Contract. **Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.**

8.17.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

#### 8.18 **Subcontractors.**

8.18.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

8.18.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

8.18.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with applicable provisions, specifications and terms of the Contract.

8.18.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

8.18.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

8.18.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

8.18.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

8.18.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

8.18.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

8.19 **Jurisdiction And Venue.** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

8.20 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

8.21 **Holidays.** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

8.22 **Survivability of Obligations.** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

8.23 **Non-Suspension or Debarment Certification.** The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or

debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

8.24 **Incorporation of Documents. Section 0100, Standard Purchase Definitions**, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:  
[https://assets.austintexas.gov/purchase/downloads/standard\\_purchase\\_definitions.pdf](https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf)

8.25 **Order of Precedence**. The Contract includes, without limitation, the Offer, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.

8.25.1 This Contract

8.25.2 Four Winds Interactive Software Subscription Agreement and attached as Exhibit A hereto.

8.25.3 Four Winds Interactive, LLC Quote attached hereto as Exhibit B hereto.

Terms in Exhibit A hereto shall supplement the terms of the Contract. To the greatest extent practicable, the documents shall be read and interpreted together.

[Signature Page to Follow]

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

FOUR WINDS INTERACTIVE

By: Margot Moellenberg  
Signature

Name: Margot Moellenberg  
Printed Name

Title: President

Date: February 25, 2019

CITY OF AUSTIN

By: D. Dellemonache  
Signature

Name: Daniel Dellemonache  
Printed Name

Title: Procurement Specialist III

Date: 2/27/19

**List of Exhibits**

- Exhibit A Four Winds Interactive Software Subscription Agreement
- Exhibit B Four Winds Interactive, LLC Quote
- Exhibit C Non Discrimination Certification, Section 0800

**EXHIBIT A**  
**FOUR WINDS INTERACTIVE SOFTWARE SUBSCRIPTION AGREEMENT**

This Subscription Services Agreement (“Agreement”) is entered into between Four Winds Interactive (“FWI” or “Us”), and the entity which has agreed to the terms of this Agreement as identified in the signature block below, or in the Ordering Document to which this Agreement has been incorporated by hyperlink or appended (“Customer” or “You” or “City”). Capitalized terms not defined elsewhere in this Agreement shall have the meaning given to them in the Definitions section below.

This Agreement provides the terms pursuant to which FWI agrees to make its Visual Communications Platform available to You. Except as otherwise expressly agreed to by FWI, You understand that you are prohibited from re-selling, distributing and/or sublicensing the Visual Communications Platform to any third party. This Agreement is intended to be a comprehensive set of terms that operate in conjunction with individual Ordering Documents (specifically, Exhibit B to the Contract), which may include a Quote and/or Statement of Work. By accepting this Agreement, which You agree may occur through hard or electronic signature, You agree to the terms of this Agreement. If you are entering into this Agreement on behalf of a company or other legal entity, You represent that You have the authority to bind such entity, its employees, authorized agents and affiliates to these terms and conditions, in which case the terms “You” or “Your” shall include such entity, employees, agents and affiliates. If You do not have such authority, or if You do not agree to comply with these terms and conditions, You must not accept this Agreement and may not purchase or use the FWI Visual Communications Platform.

**DEFINITIONS**

Capitalized terms utilized within this Agreement shall have the following meaning:

“**Affiliates**” means any entity which directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with a party to this Agreement, by way of majority voting stock ownership or the ability to otherwise direct or cause the direction of the management and policies of such party, for as long as such control exists.

“**Authorized Users**” means individual Users provisioned by FWI as Authors, Contributors or Viewers who are authorized by Customer to use the Cloud Service pursuant to this Agreement and for whom a User License has been procured. Users include but are not limited to Customer’s employees, consultants, contractors and agents.

“**Cloud Service**” is a web-based, mobile-friendly portal for Four Winds Interactive customers to manage their content and devices on a visual communications network. Customers can add new Users to the FWI Cloud and assign them User Licenses fulfilling specific needs. Access to the FWI Cloud Service includes access to the software and application suite (and any optionally procured modules) as described in the applicable Ordering Documents and Documentation that is procured by Customer.

“**Confidential Information**” means, (a) the terms of this Agreement and (b) any commercial, financial, marketing, business, technical or other data, security measures and procedures, know-how or other information disclosed by or on behalf of the disclosing party to the receiving party for purposes arising out of or in connection with this Agreement, that: (i) in the case of information in tangible form, is marked “confidential” or “proprietary;” (ii) in the case of information disclosed orally, visually or any other intangible form, is designated confidential or proprietary at the time of disclosure, and is reasonably understood by the receiving party to be proprietary or confidential; (iii) under the circumstances, a person exercising reasonable business judgment would understand to be confidential or proprietary; and (iv) will include any reproduction of such information in any form or medium, or any part of such information. Notwithstanding the foregoing, the following shall not be Confidential Information: (1) information that was in the public domain at the time of its disclosure, or which becomes public domain property through no fault of the receiving party; (2) information that was rightfully in the receiving party’s possession without restriction prior to disclosure; (3) information that was rightfully disclosed to the receiving party by a third party without restriction; (4) aggregate data collected by FWI regarding FWI’s products and services (for purposes of providing or improving FWI products and services, benchmarking system performance, preparing statistics and system metrics, marketing and other purposes) that does not contain any personal information and other Customer-specific information; and (5) information subject to disclosure based upon requests pursuant to the Texas Public Information Act, currently codified in Texas Government Code Chapter 552. Should disclosure of Confidential Information pursuant to the Texas Public Information Act be required, You shall give FWI advanced notice of complying with any such disclosure requests.

“**Customer Content**” means all content provided by Customer to FWI either directly or through submission to and/or stored in the Cloud Service by Authorized Users.

“**Device License**” shall mean a license for Content Player to receive and deploy content to a publicly facing endpoint or screen.

“**Documentation**” shall mean all manuals, user documentation made available in the English language, and other related materials pertaining to the implementation, use and support of the Cloud Service and Licenses supplied by FWI, including any documents or data pertinent to the Professional Services and training related thereto.

**“Estimate/Order Form”** means an FWI Estimate or Quote in the name of and executed by Customer and accepted by FWI which specifies the Cloud Service, Licenses, Professional Services and/or Hardware being purchased by Customer to be provided by FWI all of which are subject to the terms of this Agreement.

**“Hardware”** shall mean the equipment owned or purchased by you either directly from FWI or through a third party for use with the Visual Communications Software.

**“Maintenance Service”** shall mean call-in customer and technical support made available in the English language for diagnostic and error correction of the Visual Communications Software including available patches or solutions, as well as Visual Communications Software updates, bug fixes and enhancements.

**“Professional Services”** means the general consulting, implementation and/or training services to be provided to Customer pursuant to: (i) the Professional Services Addendum attached hereto and (ii) a Statement of Work (as defined in such addendum).

**“Purchase Order”** or **“PO”** shall mean a document which may be issued by you in a form acceptable to FWI indicating type, quantities, prices and terms for the designated Visual Communications Software Device Licenses, User licenses, Hardware, Professional or other Services. While FWI shall consider and review Purchase Orders if required by you, the terms on a PO unilaterally issued by you shall have no binding effect on FWI.

**“Term”** shall mean the period of time for which a legally binding contractual commitment remains in place as set forth in the Ordering Documents.

**“Third Party Subscriptions”** shall mean content offered by a third party and procured through FWI for and at your request for an additional fee and according to the terms of a license agreement for such content as may be required by such third party.

**“User License”** means the subscription license afforded to Customer for individual Authorized Users to access the Visual Communications Platform in accordance with the properties of the particular User License chosen. The three types of User licenses available to Customers are Author, Contributor or Viewer and are described in the Quote and Documentation.

**“Visual Communications Platform”** shall include the FWI proprietary Visual Communications Software and Cloud Service licensed to you.

**“Visual Communications Software”** shall mean the iDS Software suite including but not limited to Content Manager, Content Player, FWI Store, Integration Framework, Integration Studio and associated software products proprietary to FWI. Visual Communications Software specifically excludes third party software which may operate in conjunction with the FWI Visual Communications Platform but are not proprietary to FWI.

## ARTICLE I – LICENSE GRANT AND TERMS OF USE

**1. Cloud Service.** Subject to the terms and conditions of this Agreement and during the applicable Term, FWI shall make the Cloud Service available to You to be used by You and Your Authorized Users solely for Your internal business operations or Affiliate(s). The terms of this Agreement shall also apply to updates, and upgrades subsequently provided by FWI to You for the Cloud Service. FWI shall host the Cloud Service and may update the functionality, user interface, usability and Documentation, training and educational information relating to the Cloud Service, from time to time in its sole discretion and in accordance with this Agreement as part of its ongoing mission to improve Customer’s use of the FWI Cloud Service.

**2. Users of the Cloud Service- Passwords, Access and Notification.** FWI offers three types of Users on the FWI Cloud platform: Authors, Contributors and Viewers. These User types and corresponding license rights are defined in the FWI Documentation and applicable Ordering Documents. FWI shall provision within FWI Cloud the Users procured by You and shall authorize access to and assign unique account credentials to the number of Users. User account credentials are for designated Authorized Users only and cannot be shared or used by more than one User, but any User’s account credentials may be permanently reassigned to another User as needed. You shall be responsible for the confidentiality and use of User’s account credentials. You shall use commercially reasonable efforts to prevent unauthorized access to or use of the Cloud Service and shall promptly notify FWI of any unauthorized access or use of the Cloud Service and any loss, theft or unauthorized use of any User’s account credentials.

**3. License Grant.** Upon payment of the applicable subscription fee for the Device Licenses and User Licenses purchased (collectively “Licenses”), FWI hereby grants to you, and your Authorized Users, during the Term set forth on the Ordering Document(s), a nonexclusive, limited, non-transferable (except as set forth in this Agreement), License to be utilized in accordance with the terms of this Agreement. The source code for the Visual Communications Software is not licensed hereunder.

**4. General Restrictions.** You are responsible for all activities conducted under Your account, and for Users’ compliance with this Agreement. You must not use, and must ensure that Affiliates do not use, the Cloud Service or the Visual Communications Platform to provide an outsourced service, and may not rent, resell, sublicense, or permit the concurrent use of a single User login, or time-sharing of the Cloud Service or the Visual Communications Platform. You shall not and shall not permit any Affiliate, User or other third party to: (a) copy, translate, create a derivative work of, reverse engineer, reverse assemble, disassemble, or decompile the Cloud Service or the Visual Communications Platform or any part thereof or otherwise attempt to discover any source code or modify either the

Cloud Service or the Visual Communications Platform in any manner or form; (b) access or use the Cloud Service to circumvent or exceed user or device license limitations or requirements; (c) use the Cloud Service or the Visual Communications Platform for the purpose of building a similar or competitive product or service, (d) obtain unauthorized access to the Cloud Service (including without limitation permitting access to or use of the Cloud Service via another system or tool, the primary effect of which is to enable input of requests or transactions by other than Authorized Users; (e) use the Cloud Service or the Visual Communications Platform in a manner that is in violation of any third party rights of privacy or intellectual property rights; (f) issue or participate in any press release or other public statement related to this Agreement or the Cloud Service without prior written consent of FWI; (g) publish, post, upload or otherwise transmit Customer Data that contains any viruses, Trojan horses, worms, time bombs, corrupted files or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any systems, data, personal information or property of another; or (h) use or permit the use of any tools in order to probe, scan or attempt to penetrate or benchmark the FWI Cloud Service or more generally the FWI Visual Communications Platform. You shall comply with all applicable local, state, federal, and foreign laws, treaties, regulations, and conventions in connection with this Agreement.

You shall comply with the export laws and regulations of the United States and other applicable jurisdictions in using the FWI Cloud Service and more generally the FWI Visual Communications Platform. Without limiting the foregoing, (i) You represent that You are not named on any U.S. government list of persons or entities prohibited from receiving exports, (ii) You shall not permit Users to access or use the Cloud Service in violation of any U.S. export embargo, prohibition or restriction, and (iii) You shall comply with all applicable laws regarding the transmission of technical data exported from the United States and the country in which Your Authorized Users are located. You will not send any electronic communication or content utilizing the FWI Cloud Service that is unlawful, harassing, libelous, defamatory or threatening. FWI has the right to take remedial action if the terms of this Agreement are violated, and such remedial action may include removing or disabling access to the FWI Cloud Service and Visual Communications Platform.

Except as permitted by this Agreement, no part of the FWI Cloud Service and the broader FWI Visual Communications Platform may be copied, reproduced, distributed, republished, displayed, posted or transmitted in any form or by any means. You agree not to access the Cloud Service by any means other than through the interfaces that are provided by FWI. You shall not do any "mirroring" or "framing" of any part of the Cloud Service, or create Internet links to the Cloud Service which include log-in information, user names, passwords, and/or secure cookies. You shall ensure that all access and use of the Cloud Service by Users is in accordance with the terms and conditions of this Agreement. Any action or breach by any of such User shall be deemed an action or breach by You.

5. **Internet Connectivity:** You are responsible for securing a highspeed Internet connection and up-to-date compatible "browser" software as defined in the Documentation in order to utilize the Cloud Service. You expressly consent to FWI's storage of electronic communications and/or Customer Content to the extent necessary to provide the Cloud Services hereunder, either through FWI directly or through FWI's authorized service provider Amazon Web Services. As such, Customer acknowledges and understands that Customer's Content and electronic communications may involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by FWI or its authorized service provider. Without limiting FWI's applicable obligations under this Agreement and applicable law, FWI is not responsible for any electronic communications and/or Customer Content which are delayed, lost, altered, intercepted or stored during the transmission across networks not owned and/or operated by FWI or its authorized service provider, including, but not limited to, the Internet and Customer's local network. FWI is not responsible for interruption to the Cloud Service caused by outages in Internet connectivity.

## ARTICLE II – FEES AND PAYMENT

1. **Ordering Documents:** The individual User Licenses, Device Licenses, Professional Services and/or Hardware which shall afford access to the Visual Communications Platform and Cloud Service shall be ordered by Customer or its Affiliates by signing a Quote. Each Quote shall include at a minimum a listing of the User Licenses, Device Licenses, Professional Services, and/or Hardware being ordered, the associated fees and the applicable Term. For any order by Customer's Affiliate, the term "Customer" shall refer to Customer and such Affiliate(s).

2. **Term.** Each Quote shall set forth the Term of the Order which shall commence on the first of the month following the date upon which the Quote was executed by both Parties and shall continue for the length of time referenced on the Quote (the "Term"). If no such Term is identified, the Term shall be three years. Thereafter, the Term of the applicable Device Licenses, User Licenses and related Services shall be renewed for successive one year terms, unless either party provides written notice of non-renewal to the other at least thirty (30) days prior to the expiration of the then existing Term.

3. **Fees and Payment.** You agree to pay all fees arising from your purchase of the Licenses, Professional Services and/or Hardware in accordance with the payment terms specified on the Quote. Except as otherwise specified (i) fees are based on Licenses, Professional Services and Hardware purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, with the exception of overpayments discovered as a result of the City's audit, and (iii) quantities purchased cannot be decreased during the relevant

Term identified in the Ordering Documents. All fees payable are due within 30 days from the invoice date unless otherwise specified on the Ordering Document. If any invoiced amount is not received by FWI by the due date, then without limiting our rights or remedies, (i) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower; and (ii) we may condition future renewals and additional purchases for You on paying the amount past due.

**4. Taxes.** FWI fees do not include any local, state, federal or foreign taxes, levies or duties of any nature, including value-added, sales use or withholding taxes ("Taxes"). Customer is responsible for paying all Taxes, excluding only taxes based on FWI's net income. If FWI has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides FWI with a valid tax exemption certificate authorized by the appropriate taxing authority.

**5. Credit Cards and Purchase Orders.** Credit Cards will not be accepted for payments above Twenty-Five Thousand Dollars (\$25,000.00) unless You agree to pay a credit card usage fee of 3% in addition to the amounts due FWI. Invoices will be issued, and charges processed in advance, either annually or in accordance with the billing frequency stated in the applicable Ordering Documents. FWI will invoice you in advance and otherwise in accordance with the relevant Ordering Document(s). You may elect to issue a Purchase Order as a condition precedent to FWI invoicing you for amounts due. You agree that any terms included on the Purchase Order which differ or add to those contained in the Ordering Documents or this Agreement shall have no binding effect on FWI, as this Agreement and Ordering Documents constitute the entire agreement with respect to your purchase of Licenses, Hardware, and Professional Services. You are responsible for providing complete and accurate billing and contact information to us and notifying us of any changes to such information.

**6. CPI Increase.** Beginning with the first year following purchase of the Licenses, and for each subsequent year thereafter, FWI may adjust the License subscription fee and any recurring Professional Services fees by an amount that shall not exceed the increase in the Consumer Price Index (CPI), as of the second calendar month preceding the date this Agreement is accepted. FWI shall provide you with advance notice of any such increase.

**7. Cost of Third Party Subscriptions.** If you elect to purchase through FWI certain Third Party Subscriptions, you acknowledge that the costs of such subscriptions, if any, may be increased at the time and in the manner the increases are received from the third party. FWI shall provide you with advance notice of any such increase promptly after FWI receives any such notice from the third party.

**8. Suspension/Termination.**

a. **Suspension for Delinquent Account.** FWI reserves the right to suspend Your access to and/or use of the Cloud Service and/or Visual Communications Platform if any payment is due but unpaid, but only after FWI has provided You with two (2) delinquency notices, and at least thirty (30) days have passed since the transmission of the first notice. You agree that FWI shall not be liable to You or at any Affiliate or other third party for any suspension pursuant to this Section.

b. **Suspension for Ongoing Harm.** FWI may with contemporaneous notice to Customer suspend access to the Cloud Service and/or the Visual Communications Platform if FWI reasonably concludes that Customer's access is being used to engage in activity in violation of this Agreement, in violation of law and/or is causing immediate, material and ongoing harm to FWI or others, including a threatened security breach. In the event that FWI suspends access to the Cloud Service or the Visual Communications Platform, FWI will use commercially reasonable efforts to limit the suspension to the offending portion of the Cloud Service and work with Customer to resolve the issues causing the suspension. You agree that FWI shall not be liable to You or to any third party for any suspension of the Cloud Service or the Visual Communications Platform under such circumstances as described in this Section. Any suspension under this section shall not excuse Customer from Customer's obligation to make payments under this Agreement.

c. **Termination for Cause/Expiration.** Either party may immediately terminate this Agreement and all Estimates or Orders issued in the event the other party commits a material breach of any provision of this Agreement which is not cured within thirty (30) days of written notice from the non-breaching party. Such notice by the complaining party shall expressly state all of the reasons for the claimed breach in sufficient detail so as to provide the alleged breaching party a meaningful opportunity to cure such alleged breach. Upon termination or expiration of this Agreement, You shall have no rights to continue use of the Cloud Service and/or the Visual Communications Platform. If this Agreement is terminated by You for any reason other than a termination expressly permitted by this Agreement, then FWI shall be entitled to all of the fees due under this Agreement for the entire Term. If this Agreement is terminated as a result of FWI's breach of this Agreement, then You shall be entitled to a refund of the pro rata portion of any subscription fees paid by You to FWI under this Agreement for the terminated portion of the Term.

**ARTICLE III - SUPPORT AND MAINTENANCE SERVICES; MODIFICATIONS TO CLOUD SERVICE**

**1. Support Services and Professional Services.** As part of the Cloud Service, FWI will provide You with Documentation and other online resources to assist You in Your use of the Cloud Service and the FWI Visual Communications Platform. FWI also offers optional "for fee" enhanced Support Services and Professional Services.

**2. Modifications.** FWI may make modifications to the Cloud Service and/or particular components of the Visual Communications Platform from time to time and will use commercially reasonable efforts to notify Customer of any material modifications. FWI reserves the right to discontinue offering the Cloud Service at the conclusion of Customer's then current subscription Term. FWI shall not be liable to Customer nor to any third party for any modification of the Cloud Service as described in this Section.

**3. Service Monitoring and Analyses.** FWI continuously monitors the Cloud Service to facilitate FWI's operation of the Cloud Service; to help resolve Customer service requests; to detect and address threats to the functionality, security, integrity, and availability of the Cloud Service; and to detect and address illegal acts or violations of the Acceptable Use Policy. FWI monitoring tools do not monitor any Customer Content residing in the Cloud Service, except as needed for such purposes. FWI does not monitor, and does not address issues with, non-FWI software provided by Customer or any of Customer's Users that is stored in, or run on or through, the Cloud Service. Information collected by FWI monitoring tools (excluding Customer Content) may also be used to assist in managing FWI's Visual Communications Platform and service portfolio, to help FWI address deficiencies in its product and service offerings, and for license management purposes.

**4. Analytics.** FWI may (i) compile statistical and other information related to the performance, operation and use of the Cloud Service, and (ii) use data from the Cloud Service in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (clauses i and ii are collectively referred to as "Service Analyses"). FWI may make Service Analyses publicly available; however, Service Analyses will not incorporate Customer Content, personal information or Confidential Information in a form that could serve to identify Customer or any individual. FWI retains all intellectual property rights in Service Analyses.

**5. Modifications and Updates to Visual Communications Software.**

**a. Updates and Error Corrections to FWI Software.** FWI reserves the right to periodically perform error corrections, bug fixes, patches or other updates to the Visual Communications Platform in accordance with the Maintenance Services provided. All error corrections, bug fixes, patches, updates or other modifications shall automatically be considered part of the licensed Visual Communications Platform, subject to the provisions of this Agreement, and shall be the sole property of FWI.

**b. No Responsibility for Updates or Bug Fixes to Operating Systems, Third Party Software or Content Feeds Used in Conjunction with the Visual Communications Software.** While FWI is responsible for updates and error corrections to its proprietary Visual Communications Platform, FWI is not responsible to maintain or update the operating systems or other types of third party software or content systems that You may choose to access or utilize in conjunction with the FWI Visual Communications Software. Specifically, while you may choose to retain FWI to configure hardware and content player devices to your specifications with the operating system and third party software of your choice, FWI takes no responsibility to update or maintain those operating systems or third party software, including any malware protection. Further, FWI recommends that you incorporate any content players and devices into your standard end-point hardening baselines, patch deployment programs, and corporate malware protection protocols.

**c. New Releases.** New Software Releases applicable to the version sold plus all sequential .x releases for the version sold are included with the Subscription License Fee, provided you are current with your subscription. However, you acknowledge that your specific data security requirements or the architecture of Your particular environment may in some situations preclude you from implementing these new releases. To the extent such circumstances arise, FWI agrees to work with you in good faith to maximize your access to future enhancements without compromising your chosen architecture or data security requirements.

**6. Visual Communications Service Options.**

**a. Hosted and On Premises Models.** FWI offers a database and infrastructure hosting service as well as an option to install various components of this database and infrastructure on premises. The specific terms governing the installation method chosen by you shall be set forth in the applicable Ordering Document(s). If a hosted model is chosen, the data may be stored and accessed via a shared server or a dedicated server according to your data security needs and as described in the Ordering Document(s).

**b. Standard Maintenance Services.** FWI's standard Software Maintenance Service includes the following:

**i. Visual Communications Software Upgrades.** During the Term, FWI shall support the version of the Visual Communications Software sold, including any .x upgrades to the version sold, which may include but are not limited to enhancements to or bug fixes for the Visual Communications Platform.

**ii. Website Service.** FWI shall provide you with access to FWI's web site which contain reference materials and provide you the Ordering to electronically access, install and download upgrades to the Visual Communications Software as they are made available. You agree to provide such upgrades so that they may install them according to FWI release notes within a reasonable time, but no later than the support expiration date for the prior Visual Communications Software upgrade. A Visual Communications Software upgrade will generally be supported for six (6) months after issuance of the next replacement upgrade. FWI reserves the right to discontinue a software product, and will notify you about the remaining

service period by publication on FWI's website. You shall observe all security requirements and shall not allow others to share your website account.

iii Call-In Maintenance Service for Visual Communications Software. In accordance with the applicable Ordering Documents, Maintenance Service is available to you 7 days a week, 24 hours a day.

#### **7. Third Party Subscription Offerings.**

a. Third Party Software License Fees and Product Subscriptions. FWI offers the opportunity to purchase a variety of third party content, product and management services which may or may not include third party software. If you choose to subscribe through FWI to a third party subscription service, FWI grants to you a nonexclusive license according to the terms of such Third Party, and you hereby agree to pay the subscription fees and abide by the specific licensing terms of that third-party as set forth in the applicable Ordering Document(s), and/or click-through licensing terms. These third party products or software, while operating in conjunction with the FWI Visual Communications Platform, are separate and distinct from the FWI Visual Communications Platform, and FWI expressly disclaims any representations and warranties related to these third party products, as well as any obligations to upgrade or support these products.

Other than the content made available to you through FWI Store, it is understood that You bear direct responsibility for the particular content you choose to display or otherwise utilize in the visual communications network. While FWI may configure and design the manner in which content may be displayed, the particular content accessed and chosen, and the manner in which it is displayed, stored and accessed is the sole responsibility of You, for which FWI takes no responsibility and makes no representations as to accuracy, legality or accessibility. FWI further disclaims any responsibility to maintain or store any usage statistics for the benefit of You for any particular period of time. You retain all rights, title and interest as applicable in and to the content you furnish to FWI and FWI will not have any interest in, or right to use, the same.

### **ARTICLE IV – PROPRIETARY RIGHTS AND CONFIDENTIALITY**

**1. Intellectual Property Rights.** All rights, title and interest in and to the Cloud Service and the Visual Communications Platform (including without limitation all intellectual property rights therein and all modifications, extensions, customizations, scripts or other derivative works of the Cloud Service the Visual Communications Platform and any related components provided or developed by FWI) are owned exclusively by FWI. Except as provided in this Agreement, the rights granted to You do not convey any rights in the Cloud Service or the Visual Communications Platform, express or implied, or ownership in any intellectual property rights thereto. You grant to FWI a royalty free, worldwide, perpetual, irrevocable, transferable right to use, modify, distribute and incorporate into the Cloud Service and/or Visual Communications Platform (without attribution of any kind) any suggestions, enhancement request, recommendations, proposals, correction or other feedback or information provided by You or any Authorized Users related to the operation or functionality of the Cloud Service or the Visual Communications Platform. Any rights in the Service or FWI's intellectual property not expressly granted herein by FWI are reserved by FWI. FWI service marks, logos and product and service names are marks of FWI (the "FWI Marks"). Customer agrees not to display or use the FWI Marks in any manner without FWI's express prior written permission. The trademarks, logos and service marks of Third Party Application providers ("Marks") are the property of such third parties. Customer is not permitted to use these Marks without the prior written consent of such third party which may own the Mark.

**2. FWI Standard Materials and Tools.** You agree that in connection with the provision of the Visual Communications Platform and/or Professional Services hereunder, FWI may provide or use certain pre-existing materials, information, software components and tools that are proprietary to FWI (collectively, "FWI Standard Materials and Tools"). You acknowledge that we have informed You, and we have represented and warranted to You that all right, title and interest in and to all pre-existing FWI Standard Materials and Tools is and remains the exclusive property of FWI. FWI retains the right to re-use, transfer, distribute and license to any of its current and future clients any of its FWI Standard Materials and Tools. For avoidance of doubt unless specifically identified as "work for hire" in the Ordering Document(s), all Visual Communications Software Products and Professional Services provided hereunder shall be considered preexisting FWI Standard Materials and Tools.

**3. Ownership of Customer Content.** FWI agrees that all assets, content and intellectual property supplied by You ("Your Content and Property"), including any derivative works of Your Content and Property, shall remain the exclusive property of You. FWI shall treat (and take precautions to ensure that its employees, contractors, agents and representatives treat) Your Content and Property in accordance with the requirements, conditions and exceptions set forth below. You acknowledge and agree that in connection with the provision of the Cloud Service, FWI may store and maintain Your Content and Property for a period of time consistent with FWI's standard business processes for the Cloud Service. Following expiration or termination of the Order or a Customer account, if applicable, FWI may deactivate the applicable Customer account(s) and delete any content therein.

#### **4. Confidentiality.**

a. **Acknowledgement.** You hereby acknowledge and agree that the resources made available to you as it pertains to the FWI Visual Communications Platform, including the Documentation and the Ordering Document(s), contain valuable proprietary information and trade secrets of FWI and/or its suppliers, embodying

substantial creative efforts and confidential information, ideas, pricing and expressions. Accordingly, you agree to treat (and take precautions to ensure that your employees, contractors, agents and representatives treat) the Visual Communications Platform, Documentation and the contents of Ordering Document(s) as confidential in accordance with the confidentiality requirements and conditions set forth below.

b. **Mutual Obligations Regarding Confidential Information.** Each party agrees to keep confidential all Confidential Information disclosed to it by the other party in accordance herewith, and to protect the confidentiality thereof in the same manner it protects the confidentiality of similar information and data of its own (at all times exercising a reasonable degree of care in the protection of confidential information).

c. **Utilization of Our Confidential Information.** You agree that utilization of FWI's Proprietary and Confidential Information shall be solely for the purpose of utilizing the Visual Communications Software and shall not be used for any other purpose. Specifically, You shall not use FWI's Confidential and Proprietary Information to develop or sell software products or services that are competitive with our Visual Communications Platform and/or Professional Services as defined in this Master Agreement. Similarly, FWI agrees that it shall access and utilize your Proprietary and Confidential Information solely for the purpose of providing the Visual Communications Software and Professional Services set forth in the applicable Ordering Documents and for no other purpose.

d. **Injunctive Relief.** You acknowledge that the unauthorized use, transfer or disclosure of Confidential Information, including the Visual Communications Software and the Documentation or copies thereof may (i) substantially diminish the value to FWI of the trade secrets and other proprietary interests that are the subject of this Master Agreement; (ii) render FWI's remedy at law for such unauthorized use, disclosure or transfer inadequate; and (iii) cause irreparable injury in a short period of time. If you breach any of your obligations with respect to the use or confidentiality of FWI's Confidential Information, FWI may, in addition to any other legal or equitable rights or remedies which may be available to it, seek and obtain equitable relief against you to protect its interests therein, including, but not limited to, preliminary and permanent injunctive relief without necessity of proving actual damages or posting bond.

5. **Non-Solicitation.** During the term of this Master Agreement and for a period of two years thereafter, you agree not to solicit any FWI employee to leave their employment with FWI in order to pursue employment with you, or to pursue any other engagement outside of their duties and responsibilities with FWI. Notwithstanding the foregoing, You shall not be precluded from hiring any employee who (a) initiates discussions regarding such employment without any direct or indirect solicitation by You; (b) responds to any public advertisement placed by You; or (c) has been terminated by FWI prior to commencement of employment discussions between You and such employee.

6. **No Hosting of Confidential or Sensitive Data.** You agree that in utilizing the FWI Visual Communications Platform, the architecture of the solution is critical to enhancing data security protections and compliance with applicable data security laws. Where a use case seeks to display confidential or sensitive data, that substantive data should remain at all times behind your firewall. In this respect, you agree that you shall not push and/or store sensitive, personal identifiable information, health information or any other type of Confidential Information to any environment hosted by FWI, unless such use case and the specific type of data to be deployed has been disclosed and architected by an FWI employee and is set forth in an applicable Statement of Work. Notwithstanding the foregoing, should you provide any form of sensitive data directly to FWI to be utilized by FWI in performing administrative functions relative to your account, such as billing, then FWI shall treat such sensitive data as Customer Confidential Information.

7. **Responsibility for Content Chosen.** Through the use of the Visual Communications Platform, You will display content including your own content, or content procured from external sources. You acknowledge and agree that FWI is not responsible for the legality or accuracy of the particular content you choose to display or the availability of any external content sources. FWI does not endorse any materials available from external sources. You acknowledge and agree that FWI is not liable for any loss or damage which may be incurred by you as a result of the availability of those external sources, or as a result of any reliance placed by you on the completeness, accuracy or existence of any content provided by third party sources. To the extent allowed by Texas law, the City agrees that it is responsible to the exclusion of any such responsibility of FWI for its own proportionate share of liability for its negligent acts and omissions for claims, suits, and causes of action, including claims for property damage, personal injury and death, arising out of or connected to this Agreement and as determined by a court of competent jurisdiction, provided that the execution of this Agreement will not be deemed a negligent act.

## ARTICLE V – WARRANTIES DISCLAIMERS AND EXCLUSIVE REMEDIES

1. Each party represents that it has validly entered into this Agreement and that it has the power and authority to do so. FWI warrants that during the Term, FWI will perform the Cloud Service using commercially reasonable care and skill in all material respects as described in the Documentation and that FWI will not materially decrease the functionality described in the Documentation during the then-current subscription Term. If the Cloud Service provided to Customer was not performed as warranted, Customer must promptly provide FWI with a written notice that describes the deficiency in the service (including, as applicable, the service request number notifying FWI of the deficiency in the Cloud Service).

2. FWI represents and warrants that it is the sole owner of the entire right, title, and interest in and to Visual Communications Platform, that it has the sole right to grant the Licenses hereunder, and that it has not granted licenses to any other entity that would restrict rights granted hereunder.
3. Notwithstanding the warranty provisions set forth herein, all of FWI's obligations with respect to such warranties shall be contingent on Your use of the Visual Communications Platform in accordance with this Agreement and in accordance with the Documentation. FWI shall have no warranty obligations with respect to any failures of the Visual Communications Platform which are the result of accident, abuse, misapplication, a change in your IT platform or infrastructure/data systems, extreme power surge or extreme electromagnetic field, or third party applications or services provided by third parties.
4. FWI does not warrant that the Cloud Service will be performed error-free or uninterrupted, that FWI will correct all service errors, or that the Cloud Service will meet all of customer's requirements or expectations.
5. For any breach of the warranty, customer's exclusive remedy and FWI's entire liability shall be the correction of the deficient service that caused the breach of warranty, or, if FWI cannot substantially correct the deficiency in a commercially reasonable manner, Customer may end the deficient service and FWI will refund to customer the fees for the terminated service that customer pre-paid to FWI for the period following the effective date of termination.
6. To the extent not prohibited by law, the warranties stated herein are the sole and the exclusive warranties offered by FWI. There are no other warranties with respect to the Visual Communications Platform provided hereunder, either express or implied. No agent of FWI is authorized to alter or exceed the warranty obligations of FWI as set forth herein.

## **ARTICLE VI – INDEMNIFICATION AND LIMITATION OF LIABILITY**

### **1. Limitations of Liability.**

a. **Exclusion of consequential damages.** To the maximum extent permitted by law, in no event shall either party or its affiliates have any liability to the other party or its affiliates arising out of or in connection with this agreement for any lost profits or revenue or for incidental, consequential, punitive, cover, special, reliance or exemplary damages, or indirect damages of any type or kind however caused, whether from breach or repudiation of contract, breach of warranty, negligence, or otherwise (and whether or not the party has been advised of the possibility of such damages). Certain states and/or jurisdictions do not allow the exclusion of incidental or consequential damages, in which case such damages shall be subject to the limitations set forth below.

b. **Limitations on Liability.** The maximum aggregate liability of either party and its affiliates arising out of or in connection with this Agreement, whether such liability arises from any claim based on breach or repudiation of contract, breach of warranty, negligence, or otherwise, shall not exceed the total subscription fees paid for the Cloud Service giving rise to the liability during the twelve (12) month period immediately preceding the event out of which the liability arose.

c. **Acknowledgement; Exceptions.** Both parties acknowledge that the fees reflect the allocation of risk set forth in this Agreement and that the parties would not enter into this agreement without these limitations on their liability. The limitations of liability set forth in this section shall not apply to: (a) fees due under this agreement; (b) a breach of intellectual property rights under this Agreement, including but not limited to patent, trademark, or copyright infringement; or (c) either party's defense and indemnity obligations except as set forth in section 2 below. Notwithstanding anything to the contrary in this section, neither party shall be liable to the other party to the extent such liability would not have occurred but for the other party's failure to comply with the terms of this Agreement.

### **2. Indemnification.**

a. **FWI's Infringement Indemnity.** Subject to the terms and conditions set forth in this Section 2, FWI shall, at its own expense, defend Customer from and against any and all allegations, threats, claims, suits, and proceedings brought by third parties (collectively "Claims") alleging that the Cloud Service and the Visual Communications Platform, as used in accordance with this Agreement, infringes such third party's copyrights or trademarks, or misappropriates such third party's trade secrets and shall indemnify Customer from and against liability, damages, and costs finally awarded or entered into in settlement (including, without limitation, reasonable attorneys' fees) (collectively, "Losses") to the extent based upon such Claim(s).

FWI will have no liability for Claims or Losses to the extent arising from (a) use of the Cloud Service or the Visual Communications Platform in violation of this Agreement or applicable law, (b) use of the Cloud Service or Visual Communications Platform after FWI notifies Customer to discontinue use because of an infringement claim, (c) modifications to the Cloud Service or the Visual Communications Platform not made by FWI or made by FWI based on Customer specifications or requirements, (d) use of the Cloud Service or Visual Communications Platform in combination with any non-FWI software, application or service, or (e) services offered by Customer or revenue earned by Customer for such services.

If a Claim of infringement as set forth above is brought or threatened, FWI shall, at its sole option and expense, use commercially reasonable efforts either (a) to procure a license that will protect Customer against such Claim without cost to Customer; (b) to modify or replace all or portions of the Cloud Service as needed to avoid infringement, such update or replacement having substantially similar or better capabilities; or (c) if (a) and (b) are

not commercially feasible, terminate the Agreement and refund to the Customer a pro-rata refund of the subscription fees paid for under the Agreement for the terminated portion of the Term. The rights and remedies granted Customer under this Section state FWI's entire liability, and Customer's exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a third party.

b. [Reserved].

c. **Indemnification Procedures and Survival.** In the event of a potential indemnity obligation under this Section, the indemnified party shall: (i) promptly notify the indemnifying party in writing of such Claim; (ii) allow the indemnifying party to have sole control of its defense and settlement; and (iii) upon request of the indemnifying party, cooperate in all reasonable respects, at the indemnifying party's cost and expense, with the indemnifying party in the investigation, trial, and defense of such Claim and any appeal arising therefrom. The indemnification obligations under this Section are expressly conditioned upon the indemnified party's compliance with this Section except that failure to notify the indemnifying party of such Claim shall not relieve that party of its obligations under this Section but such obligations shall be reduced to the extent of any damages attributable to such failure. The indemnification obligations contained in this Section shall survive termination of this Agreement for one year.

## ARTICLE VII - GENERAL TERMS

1. **Insurance.** Each party agrees to carry comprehensive general liability and property damage insurance with combined bodily injury and property damage.

2. **Marketing License.** [Reserved].

3. **License to Limited Customer Analytics and Use Data.** Your utilization of the FWI visual communications platform generates usage data and analytics relative to frequency of use and amount of contact with interactive screens. Through utilization of the FWI Visual Communications Platform you grant to FWI a worldwide, royalty-free, non-transferable, and non-exclusive limited license to use such usage data and analytics for the sole purpose of measuring trends and frequency of interaction with the visual communications network.

4. **Surviving Provisions. Sections IV and VI shall survive any termination or expiration of this Master Agreement.**

5. **Notice.** All notices, authorizations, and requests in connection with this Agreement shall be deemed given (i) five days after being deposited in the U.S. mail, postage prepaid, certified or registered, return receipt requested; or (ii) one day (two days if international) after being sent by overnight courier, charges prepaid; and addressed to the notice address indicated on the Ordering Document and with a copy to the Legal Department or to such other address as the party to receive the notice or request so designates by written notice to the other.

6. **Entire Agreement.** This Agreement, together with the Ordering Document(s) and any exhibits attached thereto, contain the entire understanding and agreement between the parties respecting the subject matter hereof. This Agreement any Ordering Document(s) and any such exhibits, may not be supplemented, modified, amended, released or discharged, and no additional or prior terms shall apply, except by an instrument in writing signed by each party's duly authorized representative. For the avoidance of doubt, This Agreement shall supersede any additional or different terms contained in your Purchase Order. Any waiver by either party of any default or breach hereunder shall not constitute a waiver of any provision of this Agreement or of any subsequent default or breach of the same or a different kind.

7. **Independent Contractor Status.** Each party is an independent contractor in relation to the other party with respect to all matters arising under this Agreement. Nothing herein shall be deemed to establish a partnership, joint venture, association or employment relationship between the parties.

8. **Assignment.** Neither this Agreement nor any rights or obligations hereunder may be transferred or assigned without the other party's prior written consent, which shall not be unreasonably withheld, and any attempt to the contrary shall be void. Notwithstanding the foregoing, FWI may assign this Agreement and any applicable Ordering Document(s) and/or any rights and/or obligations hereunder to: (i) any successor by merger, acquisition, consolidation or other corporate restructuring; (ii) any parent or majority owned subsidiary; or (iii) any entity which acquires all or substantially all of FWI's assets.

9. **Choice of Law, Venue and Process.**

a. For Customers with a principal place of business located within the United States, the following jurisdiction and choice of law provision shall apply:

This Agreement and any Ordering Documents issued related to this agreement shall be governed by and construed in accordance with the substantive laws of the United States and Texas, without regard to conflicts of law principles. The parties may initiate any litigation and/or dispute resolution proceeding in the State of Texas only and irrevocably consent to the exclusive personal jurisdiction therein.

10. **Mediation.**

a. The Parties agree to attempt to resolve any dispute, claim or controversy arising out of or relating to this Master Agreement by mediation. The Parties further agree that their respective good faith participation in mediation is a condition precedent to pursuing any other available legal or equitable remedy, including litigation, arbitration or other dispute resolution procedures.

b. Either party may commence the mediation process by providing to the other party written notice, setting forth the subject of the dispute, claim or controversy, and the relief requested. Within ten (10) days after the receipt of the foregoing notice, the other party shall deliver a written response to the initiating party's notice. The initial mediation session shall be held within thirty (30) days after the initial notice. The Parties agree to share equally the costs and expenses of the mediation (which shall not include the expenses incurred by each party for its own legal representation in connection with the mediation).

**11. Counterparts and Electronic Signatures.** Delivery of an executed counterpart of this Agreement or any Ordering Document(s) by facsimile or email shall be effective as delivery of a manually executed counterpart of this Master Agreement. The execution of this Master Agreement, Ordering Document(s) or any exhibit thereto by electronic signature shall constitute a valid and binding signature.

**12. Captions.** All captions and headings in this Agreement are for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

**13. Severability.** If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

## PROFESSIONAL SERVICES ADDENDUM

THIS PROFESSIONAL SERVICES ADDENDUM ("Addendum") is an addendum to the Subscription Services Agreement (the "Agreement") between FWI and Customer, as defined in the Agreement. The Professional Services offered by FWI are designed to support you in each phase of the solution, from consulting on visual communications strategy at the outset, to implementation, and finally to on-going support and management of Your entire Visual Communications Platform. The Professional Services offered shall be performed in a workmanlike manner and consistent with generally accepted industry standards. While you may choose to manage your own visual communications network, FWI offers you the ability to out-source this responsibility to us through various managed services offerings as described more fully in the Ordering Documents.

If Customer chooses to procure Professional Services from FWI then all such services shall be provided pursuant to the terms and conditions herein. Capitalized terms used in this Addendum shall have the meaning defined under the Agreement. The terms and conditions of this Addendum are hereby incorporated by reference into the Agreement. In the event of conflict between this Addendum and the Agreement, the terms and conditions of this Addendum shall prevail with respect to the Professional Services procured. The terms in the Statements of Work related to the actual rates to be charged and the scope of the Professional Services to be performed thereunder shall control.

**1. Scope of Services.** Subject to the terms and conditions of the Agreement and this Addendum, FWI will provide Customer with Professional Services as set forth in the applicable statements of work executed by FWI and Customer or in the Ordering Documents executed by Customer (each, a "Statement of Work" or "SOW"). "Deliverable(s)" shall mean the Professional Services, deliverables and/or training materials provided pursuant to an SOW. All Statements of Work shall be deemed part of and subject to this Addendum.

a. **Terms and Conditions for Training. Training Deliverables.** Customer is solely responsible for any printing, shipping and copying charges for any training Deliverables. All electronic and hard copy versions of the training Deliverables are provided for Customer's internal training purposes only. Customer is prohibited from: (a) modifying the training Deliverables, unless otherwise authorized in writing by FWI or set forth in an applicable SOW; (b) reselling or sublicensing any training Deliverables; and (c) utilizing the training Deliverables to replicate or attempt to perform the training, unless otherwise authorized in writing by FWI or set forth in an applicable SOW; and developing or attempting to develop any of the products described in such training Deliverables. Customer may not record, stream or otherwise capture any performance or aspect of the Professional Services. Training Deliverables are not subject to any maintenance, support or updates.

**2. Change Order Process.** If Customer or FWI requests a change in any of the specifications, requirements, Deliverables, or scope (including drawings and designs) of the Professional Services described in any Statement of Work, the party seeking the change shall propose the applicable changes by written notice. Within forty-eight (48) hours of receipt of the written notice, each party's project leads shall meet, either in person or via telephone conference, to discuss and agree upon the proposed changes. FWI will prepare a Process Change Request ("PCR") describing the proposed changes to the Statement of Work and the applicable change in fees and expenses, if any. Process Change Orders are not binding unless and until they are executed by both parties. Executed Process Change Orders shall be deemed part of, and subject to, this Addendum. If the parties disagree about the proposed changes, the parties shall promptly escalate the change request to their respective senior management for resolution.

**3. Project Materials.**

a. **Deliverables.** FWI shall own all rights, title and interest in and to the Deliverables (excluding any Customer Content provided to FWI for its provisioning of Professional Services), and related intellectual property rights. FWI shall have the right to use any such Customer Content solely for the purpose of providing the Professional Services to Customer hereunder. Deliverables are FWI Confidential Information and Customer may not reverse engineer, decompile, disassemble, translate, copy, reproduce, display, publish, create derivative works of, assign, sell, lease, rent, license, sublicense or grant a security interest in all or any portion of the Deliverables. Subject to terms and conditions of the Agreement and this Addendum, and during the Term, FWI hereby provides Customer with a limited, non-exclusive, non-transferable (except in connection with an assignment under the General Provisions section of the Agreement applicable to assignment) and terminable license to use the Deliverables solely for Customer's internal operations in connection with its authorized use of the applicable Visual Communications Platform.

b. **Tools.** Notwithstanding any other provision of this Addendum: (i) nothing herein shall be construed to assign or transfer any intellectual property rights in the proprietary tools, libraries, know-how, techniques and expertise ("Tools") used by FWI to develop the Deliverables, and to the extent such Tools are delivered with or as part of the Deliverables, they are licensed, not assigned, to Customer, on the same terms as the Deliverables or as otherwise agreed by Customer; and (ii) the term "Deliverables" shall not include the Tools. Tools are FWI Confidential Information.

**4. Third Party Engagements.** If you choose to identify and purchase your own Hardware, or implement the Visual Communications Platform either yourself or through a third party other than FWI or one of its authorized

subcontractors, FWI takes no responsibility for the appropriateness, quality or efficacy of the Hardware purchased or Professional Services provided.

**5. Responsibility for Content Chosen.** Through the use of FWI's Visual Communications Platform, you have the ability to display content of your choice, including content which you own, as well as content which you may have procured from external sources. You acknowledge and agree that FWI is not responsible for the legality or accuracy of the content you choose to display unless such content is made available to you through FWI Store. While certain third party content sources may be purchased through FWI, the parties agree that FWI is not responsible and does not warrant the continued availability of any third party content sources. Nor does FWI endorse any materials available from such third party sources. You acknowledge and agree that FWI is not liable for any loss or damage which may be incurred by you as a result of the availability of those third party content sources, or as a result of any reliance placed by you on the completeness, accuracy or existence of third party content sources.

**6. Out of Scope Items.** The following is a list of those items that are outside of the scope of FWI Professional Services engagements, unless expressly stated otherwise in the applicable Statement of Work: Any software features/functionality not based on current Visual Communications Software versions available at the time of implementation kickoff; Data migration or data entry; Any features demonstrated during the sales process but not specifically included in the Statement of Work; Decryption or redistribution of live video or data streams; Creation of any original content such as logos; Converting content into file formats compatible with Content Manager/Content Player; Network configurations; Modifications required to the project plan which are caused by aspects of your environment not previously disclosed or otherwise unknown; Works Made for Hire, as that term is defined is defined in the United States Copyright Act, 17 U.S.C. § 101).

**7. Professional Services Warranty.**

a. Professional Services Warranty. FWI warrants that (a) it and each of its employees, consultants and subcontractors, if any, that it uses to provide and perform Professional Services has the necessary knowledge, skills, experience, qualifications, and resources to provide and perform the services in accordance with the SOW; and (b) the Professional Services will be performed for and delivered to Customer in a good, diligent, workmanlike manner in accordance with industry standards. FWI's ability to successfully perform hereunder is dependent upon Customer's provision of timely information, access to resources, and participation.

b. Disclaimer. Section 7.a. above sets forth the sole and exclusive warranties and remedies related to the professional services, deliverables, and tools under this Addendum. There are no other warranties or conditions, express or implied. Except as provided herein, the professional services and deliverables provided to customer are on an "as is" and "as available" basis.

**8. Limitations of Liability for Professional Services.** In no event shall either party or its affiliates have any liability to the other party or its affiliates arising out of or in connection with this addendum or the applicable SOW for any lost profits or revenue or for incidental, consequential, punitive, cover, special, reliance or exemplary damages, or indirect damages of any type or kind however caused, whether from breach or repudiation of contract, breach of warranty, negligence, or otherwise (and whether or not the party has been advised of the possibility of such damages). Notwithstanding anything to the contrary in the applicable SOW or Agreement, the maximum liability of FWI and its affiliates arising out of or in the connection with this Addendum or the applicable SOW whether such liability arises from any claim based on breach or repudiation of contract, breach of warranty, negligence, or otherwise shall be the amount paid by customer for such professional services under the applicable SOW. Both parties acknowledge that the fees reflect the allocation of risk set forth in this addendum and that the parties would not enter into this Addendum or the applicable SOW without these limitations on their liability. Certain states and/or jurisdictions do not allow the exclusion of incidental or consequential damages, in which case such damages shall be subject to the limitations in this section. Notwithstanding anything to the contrary in this section, neither party shall be liable to the other party to the extent such liability would not have occurred but for the other party's failure to comply with the terms of this Addendum or the applicable SOW. This limitation of liability shall not apply to violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement, and indemnification obligations under the Contract.

**9. Term.** Each SOW shall commence on the date it is last signed, and shall expire upon completion of the project set forth in the applicable SOW, or as otherwise set forth in the applicable SOW. Once signed by both parties, a SOW and/or an Estimate/Order shall be non-cancellable, except as otherwise explicitly stated in such SOW or Estimate/Order.

**10. Subcontracting.** FWI's relationship with Customer pursuant to this Addendum will be that of an independent contractor. Neither party will have any authority to bind the other, to assume or create any obligation, to enter into any agreements, or to make any warranties or representations on behalf of the other. Each party is solely responsible for all of its employees and agents and its labor cost and expenses and for any and all claims, liabilities or damages or debts of any type whatsoever that may arise on account of each party's activities or those of its employees or agents in the performance of this Addendum. FWI reserves the right to use third parties (who are under a covenant of confidentiality with FWI), including, but not limited to, offshore subcontractors to assist with

the Professional Services, including, without limitation, any data migration, configuration, implementation and development processes.

**11. Non-Impediment.** Nothing in this Addendum shall be construed as precluding or limiting in any way the right of FWI to provide consulting, development, or other services of any kind to any individual or entity (including without limitation performing services or developing materials which are similar to and/or competitive with the Professional Services and/or Deliverables hereunder).

**12. Entire Addendum.** The parties acknowledge that they have had previous discussions related to the performance by FWI of Professional Services for Customer and the possible strategies which may be used by FWI to implement and achieve the requirements identified by Customer. This Addendum, together with the attached exhibits that are incorporated by reference, and the Agreement, constitute the complete agreement between the parties and supersede all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Addendum and such exhibits. The parties expressly disclaim any reliance on any and all prior agreements, understandings, RFPs, verbal and/or written communications related to the Professional Services to be provided by FWI. No other act, document, usage or custom shall be deemed to amend or modify this Addendum unless agreed to in writing signed by a duly authorized representative of both parties.

## HARDWARE ADDENDUM

This Addendum sets forth the terms and conditions which will govern your purchase of Hardware from FWI. You acknowledge that FWI is not a manufacturer of Hardware and offers no warranties for the hardware purchased. Any warranties applicable to the Hardware are limited to those provided by the manufacturer and passed through to you. Once Hardware is purchased by you through FWI, the obligation to pay for the Hardware arises, and no return rights exist other than those specifically identified in the Ordering Documents.

These terms and conditions supplement the specific billing terms and conditions for Hardware purchases set out in the applicable Ordering Document(s). For any Hardware purchases over \$25,000 of for any order of custom Hardware, FWI reserves the right to require a 100% deposit prior to the Hardware order being placed. Any additional or different terms in any form delivered by you shall not be honored and shall be null and void unless specifically negotiated and signed by an authorized agent of FWI. You accept and agree to comply with these terms and conditions by making a purchase or placing an order for Hardware with FWI. FWI does offer various services to support, repair and replace Hardware once purchased. These service offerings vary depending upon the type of hardware purchased. The terms and conditions governing these service offerings are fully set forth in the applicable Ordering Documents.

**1. Title; Risk of Loss.** Title to Hardware and risk of loss or damage during shipment pass from FWI to you upon shipment from FWI's facility (F.O.B. Origin, freight prepaid and added) or drop shipment from FWI's supplier. FWI retains a security interest in the Hardware until payment in full is received. If you receive damaged product, a claim should be filed with the carrier, according to the carrier's policies and procedures.

**2. Shipping Costs.** You are responsible for the shipping charges incurred for the delivery of the Hardware. Estimated shipping charges for Hardware purchased by you will be identified on the applicable Ordering Documents. These are estimates only. After the Hardware has shipped, we will invoice you for all shipping charges actually incurred, which will be due in accordance with the payment terms set forth on the Ordering Documents and this Master Agreement.

**3. Export Hardware Sales.** If this transaction involves an export of items (including, but not limited to commodities, software or technology), subject to the Export Administration Regulations, such items were exported from the United States by FWI in accordance with the Export Administration regulations. You agree that you will not divert, use, export or re-export such items contrary to United States law. You expressly acknowledge and agree that you will not export, re-export, or provide such items to any entity or person within any country that is subject to United States economic sanctions imposing comprehensive embargoes without obtaining prior authorization from the United States Government. The list of such countries subject to United States economic sanctions or embargoes may change from time to time, but currently includes Cuba, Iran, Sudan, and Syria. You also expressly acknowledge and agree that you will not export, re-export, or provide such items to entities and persons that are ineligible under United States law to receive such items, including but not limited to, any person or entity on the United States Treasury Department's list of Specially Designated Nationals or on the United States Commerce Department's Denied Persons List, Entity List, or Unverified List. In addition, manufacturers' warranties for exported products may vary or may be null and void for products outside the United States.

**4. Warranties.** You understand that FWI is not the manufacturer of the Hardware you may elect to purchase through FWI. Therefore, the Hardware warranties offered are only those of the relevant manufacturer. In purchasing the Hardware, you agree that you are relying on the manufacturer's specifications only and are not relying on any statements, specifications, photographs or other illustrations representing the products that may be provided by FWI. FOUR WINDS INTERACTIVE AND ITS AFFILIATES HEREBY EXPRESSLY DISCLAIM ALL WARRANTIES EITHER EXPRESS OR IMPLIED, RELATED TO THE HARDWARE PURCHASED BY YOU INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF TITLE, ACCURACY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTY OF NONINFRINGEMENT. THE DISCLAIMER CONTAINED IN THIS PARAGRAPH DOES NOT AFFECT THE TERMS OF ANY MANUFACTURER'S WARRANTY. You acknowledge that no employee of FWI or its affiliates is authorized to make any representation or warranty on behalf of FWI or any of its affiliates outside of those documented as the manufacturer's warranty. FWI will not be responsible for and no liability shall result to FWI or any of its affiliates for any delays in delivery which result from any circumstances beyond FWI's reasonable control, including, but not limited to, product unavailability, carrier delays, delays due to fire, severe weather conditions, failure of power, labor problems, acts of war, terrorism, embargo, acts of God, or acts or laws of any government or agency. Any shipping dates provided by FWI and any purported deadlines contained in any other document are estimates only.

**5. Facilitation of Return for Breach of Manufacturer's Warranty on Hardware Purchased.** FWI will work with you to facilitate a return for breach of a Manufacturer's Warranty. For a claimed breach of Manufacturer's Warranty, please contact FWI Support at 877-204-6679, or via email at [returns@fourwindsinteractive.com](mailto:returns@fourwindsinteractive.com) to initiate a return request. Upon receipt of a return request, FWI shall address and make a good faith effort to facilitate the issuance of a Return Merchandise Authorization (RMA) by the Manufacturer. If the RMA is issued, you must return the subject Hardware to the Manufacturer within thirty (30) days of the RMA issuance date. Nothing within this

provision shall prevent you from working directly with the Manufacturer on claimed breach of warranty issues. Further, FWI makes no representation and takes no position as to when or if a breach of warranty has occurred or whether an RMA should be issued. To the contrary, FWI offers to facilitate the communication between you and the Manufacturer as a service to you, but does not take on any additional obligation as to an ultimate determination of whether a breach of warranty has occurred or whether an RMA should be issued, as those determinations remain within the exclusive province of the Manufacturer. Other than facilitating a return of the hardware for breach of warranty, no return rights exist for Hardware purchased unless specifically set forth in the Ordering Documents.

**6. Issuance of RMA.** Hardware for which an RMA has been issued shall be returned undamaged and 100% complete. This includes manufacturer box, UPC label, packing materials, all manuals, blank warranty cards, and accessories. Display boxes can be purchased by you for return of displays that do not have the original packaging. You understand that you cannot return displays without Manufacturer packaging for freight damage purposes.

## Out of Scope

- Software upgrades
- Application feature or functionality changes
- Any software features or functionality that is not included in FWI's current software versions available at the time of Managed Services implementations
- Data migration
- FWI Store Subscription
- Onsite travel by the FWI team.
- Format conversion to files compatible with Content Manager Desktop / Content Player.
- Additional design services for template design, motion graphics, logo creation, or other creative content.
- Sign architecture services for template or application creation.
- Implementation services for device configuration, network diagram, or software implementation.
- Custom development services.
- Network configuration, wiring, or physical installation of any components at Customer's site.

## Project Assumptions

- No additional professional services shall be included.
- All customer-provided images must be 96dpi. All customer-provided backgrounds must be at least 1920x1080 for horizontal applications or 1080x1920 for vertical applications.
- Work will be performed remotely via web meetings and conference calls.
- FWI makes no guarantee that FWI personnel / resources assigned to work on this SOW will be exclusively assigned to this project. FWI retains the right to make all staffing and personnel decisions.
- FWI will make this service available through the life of the current software agreement, but reserves the right to suspend availability should the account not remain current.

## Customer Requirements

- The customer must provide FWI with remote network access to each property network prior to the commencement of delivery efforts.
- If not storing content in a hosted environment, provision of a specific shared folder access for content storage that is accessible to signage network is required.
- If the FWI infrastructure is installed on premise, remote access to the installed instances of Content Manager and Content Player will be required. This is not a requirement for hosted infrastructure.
- Existing network at each infrastructure must be in place and able to support digital signage deployment.

**EXHIBIT C**  
**City of Austin, Texas**  
**NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION**

**City of Austin, Texas**  
**Equal Employment/Fair Housing Office**

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

**City of Austin**  
**Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy**

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

**Sanctions:**

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

**Term:**

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 25 day of February, 2019

CONTRACTOR	Four Winds Interactive, LLC
Authorized Signature	
Title	President



## City of Austin Purchasing Office

### Sole Source Certificate of Exemption

DATE: December 19, 2018

DEPT: Austin Convention Center

TO: Purchasing Officer or Designee

FROM: Kelly Jones & Debbie Gossett

PURCHASING POC: Dan Dellmonache

PHONE: 512-404-5351

Chapter 252 of the Local Government Code requires that municipalities comply with certain competitive solicitation procedures before entering into a contract requiring an expenditure greater than \$50,000, unless the expenditure falls within an exemption listed in Section 252.022 or other applicable law.

Refer to Local Government Code 252.022 for a complete list of exemptions:

[Link to Local Government Code](#)

This Certificate of Exemption must be complete, fully executed, and filed with the City Purchasing Office.

The City has deemed this procurement to be exempt from the competitive solicitation requirements of LGC Chapter 252 based on the following facts:

1. The undersigned is authorized and certifies that the following exemption is applicable to this procurement.

Please check the criteria listed below that applies to this sole source request:

- Items that are available from only one source because of patents, copyrights, secret process, or natural monopolies.
- Films, manuscripts or books that are available from only one source.
- Gas, water and other utilities that are available from only one source.
- Captive replacement parts or components for equipment that are only available from one source.
- Books, papers and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials.
- Management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits.

2. Describe this procurement including the following information as applicable:

- What it is for and why it is needed?
- What is the municipal purpose that this procurement addresses or furthers?
- Why is the procurement a sole source?
- Has this procurement or a similar procurement been competitively solicited in the past?
- Why is the vendor the only viable solution?
- Are there any other alternative solutions? If so, why are those alternatives unacceptable?
- Is there a concern regarding warranty, compatibility, and/or routine safety?
- Are there territorial or geographic restrictions for the product distribution and sale?
- Are there other resellers, distributors, or dealers in the market?
- What other suppliers or products/services were considered?
- If the product is designed to be compatible with existing equipment/item/system, describe the age, value and useful life remaining of the current equipment/item/system. What is the estimated cost of buying new equipment/item/system? What is value of buying the addition versus buying all new?
- Is there a way to retrofit another brand? What is this estimated associated cost?
- What specialized training or certifications are necessary to maintain or repair the equipment/item/system? Is it specific to the proposed vendor?
- **Prices were determined to be reasonable based on the following (select all that apply):**
  - Prices are the same or similar to current City contract.  
Notes: At a minimum, note the City of Austin contract number and title.
  - Prices are the same or similar to current contract with another government.  
Notes: At a minimum, note the contract number, title and government that created the contract.
  - Prices are on a current and publicly available list price, for the same or similar products, available to all government and commercial customers.  
Notes: At a minimum, note the list price title, source of the list price (catalog and catalog publish date or web address and download date).
  - Prices are established by law or regulation.  
Notes: At a minimum, note the legal or regulatory reference that established the prices.
  - Other means of determining Price Reasonableness.  
Notes: Describe any other source that was used to establish Price Reasonableness.

\* The questions in the form are designed to justify why this purchase should be exempt from a competitive procurement process. Failure to provide adequate documentation to substantiate the request may lead to the request being rejected.

- What it is for and why it is needed?
  - Four Winds Interactive is digital signage software that allows us to manage all internal digital signs, digital walls and external marquees at PEC and ACC and is currently unsupported and cannot be upgraded due to a lapse in service from Four Winds Interactive, LLC (FWI) through the DIR contract. FWI provides the software that allows us to display content provided to us by our clients during events, directional instructions, emergency information, and COA approved information. The service is critical to our event operations.
- What is the municipal purpose that this procurement addresses or furthers?
  - The digital marquees are a communication tool for ACCD to advertise future events to Austin residents and visitors.
- Why is the procurement a sole source?
  - Four Winds Interactive, LLC is the exclusive creator and owner of the FWI interactive proprietary software platform and related products.
- Has this procurement or a similar procurement been competitively solicited in the past?
  - Four Winds Interactive, LLC was previously procured through the State of Texas Department of Information Resources (DIR). Unfortunately, FWI is no longer available through Dell via the DIR.
- Why is the vendor the only viable solution?
  - FWI has been an integral part of ACCD IT operations for our external digital marquees and internal digital signage at PEC and ACC. To move away from FWI on such a short timeframe, would be at a significant effort and cost to the City.
- Are there any other alternative solutions? If so, why are those alternatives unacceptable?
  - Possibly, but it is unacceptable to entertain other solutions due to the multi-year investment already made in the current solution, and the training of staff to manage it. Moving to another alternative would negatively impact our events operations.
- Is there a concern regarding warranty, compatibility, and/or routine safety?
  - Our current solution is not supported until we renew our software.
- Are there territorial or geographic restrictions for the product distribution and sale?
  - No
- Are there other resellers, distributors, or dealers in the market?
  - No
- What other suppliers or products/services were considered?
  - Specific products considered are unknown, but at the time of purchase, 10 years ago, other products were considered.
- If the product is designed to be compatible with existing equipment/item/system, describe the age, value and useful life remaining of the current equipment/item/system. What is the estimated cost of buying new equipment/item/system? What is value of buying the addition versus buying all new?
  - Unknown until other solutions evaluated.
- Is there a way to retrofit another brand? What is this estimated associated cost?
  - Unknown until other solutions evaluated.
- What specialized training or certifications are necessary to maintain or repair the equipment/item/system? Is it specific to the proposed vendor?
  - Software issues are only supported by the vendor.

3. Forward the completed and signed Certificate of Exemption to the Purchasing Office along with the following documentation:
- Scope of Work or Statement of Work or Vendor Proposal
  - Vendor's Quote
  - Project timeline with associated tasks, schedule of deliverables or milestones, and proposed payment schedule
  - Vendor's or Manufacturer's (if vendor is a sole authorized distributor) sole source letter: less than 6 months old, signed by an authorized representative, and on company letterhead, should clearly state they are the sole provider and explain why
4. Based on the above facts and supporting documentation, the City of Austin has deemed this procurement to be exempt from competitive procurement requirements pursuant to Texas Local Government Code section 252.022(7) and  contract with:
- (Vendor Name): FOUR WINDS INTERACTIVE, LLC for
- (Description of Procurement): DIGITAL SIGNAGE SOLUTIONS
5. Check the contract type (one-time or multi-term) and fill in the dollar amount and term as applicable:
- This is a one-time request for \$ \_\_\_\_\_
  - This is a multi-term contract request for twelve months in the amount of \$50,000 with four 12-month renewal options for \$50,000 each for a total contract amount of \$250,000.

Recommended  
Certification

Kelly Jones 12/20/18  
Originator Date

Approved  
Certification

[Signature] 12/21/18  
Department Director or designee Date

\_\_\_\_\_  
Assistant City Manager / General Manager Date  
(procurements requiring Council approval)

Purchasing Office  
Review

[Signature] 2/27/19  
Authorized Purchasing Office Staff Date

Purchasing Office  
Management Review

\_\_\_\_\_  
Purchasing Officer or designee Date  
(procurements requiring Council approval)



December 20th, 2018

RE: Sole Source Letter

To Whom It May Concern:

Four Winds Interactive LLC (“FWI”) is the exclusive creator and owner of the FWI interactive proprietary software platform and related products. The FWI proprietary software is available only through an expressed license grant authorized by FWI. No third party has the legal right to sell or otherwise sublicense our software without FWI’s express approval such that there is no secondary market from which the software can be unilaterally licensed or otherwise obtained.

Sincerely,

A handwritten signature in black ink that reads 'Margot Moellenberg'. The signature is written in a cursive, flowing style.

Margot Moellenberg  
President and COO of FWI